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THE NEW JUAN CROW: MODERN-DAY CONSEQUENCES OF HISTORIC RACIAL DISCRIMINATION  
AGAINST LATINO/A AMERICANS

by

Gracie Mahoney

A thesis submitted in partial fulfillment of the requirements  
for graduation with Honors in the Ethics and Public Policy

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Caroline J. Tolbert  
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Fall 2020

All requirements for graduation with Honors in the  
Ethics and Public Policy have been completed.

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THE NEW JUAN CROW: MODERN-DAY CONSEQUENCES OF HISTORIC RACIAL  
DISCRIMINATION AGAINST LATINO/A AMERICANS

by

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A thesis submitted in partial fulfillment of the requirements for graduation  
with Honors in the  
College of Liberal Arts and Sciences

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Fall 2020

All requirements for graduation with Honors in  
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## **ABSTRACT**

The United States still has a problem with institutional discrimination against racial and ethnic groups outside of non-Hispanic whites. Similar to how political scientists and historians have enlightened readers about how historic Jim Crow laws still contribute to systemic racism against Black Americans today, this study outlines how “Juan Crow” laws against have contributed to a history of discrimination against Latino/a Americans in many aspects of public life. First, this paper examines the history of how Latinos/as are classified and how such classifications have aided both government-permitted and government-sponsored legal discrimination, prejudice, and even violence against Latinos prior to the 1960s. Next, there is a description of how the old Juan Crow has evolved into the inequality that contemporary Latinos/as face in the areas of housing and wealth, education, and criminal justice outcomes. Finally, two proposals, one for promoting positive educational narratives and Hispanic-Serving Institutions and one for promoting better representation in all levels of government, are offered as having the potential to begin helping dismantle the current system of institutional discrimination against Latino/a Americans.

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## ***I. INTRODUCTION***

The history of the United States is also a history of long-standing racial discrimination. As a former colonial nation, the U.S. necessarily has a heterogeneous population; unfortunately, these divisions among country's population have long been lopsided, with clearly defined in-groups and out-groups. Since the establishment of the first European colony at Jamestown, the in-group in the United States has always been non-Hispanic whites. As the demographic group with the highest concentration of wealth and political power, non-Hispanic whites enjoy greater representation in government and social class mobility than those in the out-groups. More concerning is the fact that this in-group has historically exercised its power through government and industry in order to maintain its place in the class hierarchy above other Americans.

Of these divisions, the most thoroughly studied is that between white and Black Americans. Groundbreaking research over the last decade has led to a new understanding that the subjugation of Blacks did not suddenly disappear with the end of slavery; rather, researchers like Michelle Alexander (*The New Jim Crow*, 2010) and Richard Rothstein (*The Color of Law*, 2017) have drawn attention to the use of constitutional law and housing policy beginning in the 20<sup>th</sup> century that created long-term housing, wealth, and educational discrimination against Blacks. The reason these housing laws matter is because owning a house is the primary way through which Americans generate personal wealth; by using laws to prevent People of Color from homeownership, the government effectively prevented them from the same wealth generation that their White counterparts received. Their work provides evidence that there is far more research to be done regarding the contemporary effects of historic laws and policies if we as a nation are to successfully dismantle the systems and institutions that promote such racial and class disparity among the general populace.

Less studied are the impacts of these discriminatory practices regarding Latinos/as, especially in the Southwestern United States (Hero, 1992). Therefore, the purpose of this paper is to 1) define the historic laws and policies that discriminated against Latino/a Americans, 2) identify the modern-day consequences of these laws and policies, and 3) suggest policy proposals that can potentially begin to correct for this institutional discrimination. Each section will be divided into its own numbered sections, and the fifth and final section will serve as a conclusion. Hopefully, this paper will prove to be a thorough introduction to the foundations of – and possible policy solutions for – the inequality that contemporary Latinos/as face in all aspects of public life.



## ***II. HISTORIC INSTITUTIONAL DISCRIMINATION***

### ***A. A Brief Note on Classification***

Latinos/as are a heterogeneous ethnic group, with descendants from Cuba, Puerto Rico, Mexico and many other South and Central American nations. In 2020, they represent more than 17% of the total population of the U.S. Cuban Latinos/as tend to be politically conservative and affiliate with the Republican Party, although this has recently been changing, while Latinos/as from Mexican heritage tend to affiliate with the Democratic Party. As an ethnic group they share language (Spanish) and religious traditions. Census data indicates more than 9 in 10 Hispanics are white race.

In order to properly understand the nuances of how Latinos/as faced institutional discrimination, one must first understand the complicated history of how the demographic has been classified, both in an official capacity by the United States government and in a social capacity by Latinos/as themselves. Simply put, the way we classify Latinos/as has repeatedly changed since the mid-1800s, and these nominal changes have been used to justify – and in some cases, even deny – substantive discrimination.

From a legal perspective, the United States government presently maintains that Latinos/as do not constitute a racial group; rather, they are a distinct ethnic group, with members in every Census-recognized race. However, legal scholar Ian Haney-López (1997) notes that historically, Latinos/as were classified in the Census as members of the “Mexican” race from the turn of the century until the 1940s. In later decades, he writes that “[the Census] has since categorized Mexican Americans and other Latino/a groups as white (1940-1970), as members of the “other” racial designation (1980), or as part of a racially unspecified Hispanic ethnic group (1990-present)” (p. 1148). Since the 1970s, the Census asked a separate question about Hispanic identity.

This changing legal definition of Latino/a Americans is especially important to understand in the historical context of the time frames during which each classification was used. The wave of annexations of states with Latino/a populations and significant Mexican immigration through the 1930s, the numerous legal challenges regarding discrimination on the basis of race in schools and public areas from the 1940s to the 1970s, and finally, amnesty, Latino/a heritage reclamation, and the ongoing wave of immigration from Central America that has lasted from the 1980s to the present day.

Equally important is understanding the social classification of Latinos/as, as it has been used on occasion to explain why the government happened to hold a convenient legal definition of the demographic (Brown, Jones, & Becker, 2018: p. 119). In terms of self-classification, a majority of Latinos/as referred to themselves as strictly white from a racial perspective until the 1970s (during this era, the most common form of discrimination involved outward indicators of heritage, such as “Hispanic-sounding” names and skin tone/hair and eye color); from approximately 1980 to 2000, the inclusion of the “other” race category led to a significant number of Latinos/as self-classifying as “other, Hispanic;” finally, changes to Census forms and general attitudes concerning people of mixed ethnic heritages has resulted in most Latinos/as identifying as “white, Hispanic and/or Latino” as of the 2000 Census, as it was the first Census to allow respondents to select more than one racial category (Rodríguez, 2000: pp. 9-13).

Though Latinos/as as a demographic are far from monolithic as discussed above, recognizing that they have been subject to a series of broad legal and self-classifications describing their otherwise heterogeneous ethnic group also means understanding that the use of these general labels has caused the same generalized discrimination to occur across the entire demographic.

*B. Government-Permitted Discrimination*

Starting in the mid-1800s, the Civil War, the end of slavery, and the beginning of the Reconstruction era were accompanied by an exponential increase in the Latino/a populations of the Southwestern states because of new annexations and immigration. Rodríguez (2000) notes that these new citizens underwent an immediate racialization process; however, these Latino/a immigrants in the Southwest, like their Asian counterparts in the West, created a new classification problem for the existing racial hierarchy. For the first time in our nation's history, a notable portion of the general population fell into a category that did not neatly fit in to the existing dichotomy of white and Black (pp.17-18). As such, the dichotomy reacted through evolving into the less clear-cut white and non-white. However, this evolution created its own problems, as some Latinos/as are white and European in origin, some are mixed between Spanish and indigenous, and some are indigenous (Ibid.: pp. 18-19). Ultimately, these immigration trends during the latter half of the nineteenth century resulted in the early twentieth century practice of identifying Latinos/as by their names, their fluency in Spanish, and occasionally by their appearances. Coupled with the emergence of racially discriminatory laws born from largely white state legislatures who were disgruntled over the recent enfranchisement of Black men was a culture of open, government-permitted public discrimination against any group that was not explicitly white; unfortunately, this included many Latinos/as.

Discrimination by the general public against Latinos/as, while typically limited to regions with significant Latino/a populations, was often just as cruel and inhumane as was the discrimination against Black Americans in the Deep South. On the topic of mobs propagating violence, particularly lynchings, against Latinos/as, Delgado (2009) writes:

“The reasons that motivated the lynchings were similar for [African and Latino/a Americans] – acting ‘uppity,’ taking away jobs, making advances toward a white woman, cheating at cards, practicing ‘witchcraft,’ and refusing to leave land that Anglos coveted...Mexicans were lynched for ‘acting too Mexican’ – speaking Spanish too loudly or reminding Anglos too defiantly of their Mexicanness” (p. 299).

In all, authorities from the Southwestern region report the lynchings of 597 “Mexicans” during the Reconstruction era. Many law enforcement organizations, particularly the Texas Rangers, actively participated in the lynchings. Violence against Latinos/as continued into the twentieth century when white vigilantism against Latinos/as who had supposedly wronged a member of their group was largely overlooked, thus denying these people their due process. In the 1940s, Latinos/as who wore zoot suits in protest of World War II were often publicly beaten (Ibid.: pp. 300-301).

Methods of discrimination that did not necessarily involve physical violence also persisted. Many cities and counties enacted laws that banned the speaking of Spanish, local employers and business owners routinely denied service and employment to Latinos/as just for being bilingual; these laws continued until the Civil Rights Movement, although modern employers can still legally insist that employees speak only English when interacting with customers or guests (Ibid.: p. 304). In the 1990s, many states adopted Official Language laws, requiring all government documents and election ballots be printed in only English language (Hero, 2000)

Given the history of systemic racism against Latinos/as throughout the nineteenth and twentieth centuries, today’s discrimination should not come as a surprise.

### *C. Government-Sponsored Discrimination*

Whether the area of focus is voting rights, education, or housing, the reality is clear: in the decades preceding the Civil Rights Movement, government-sponsored discrimination against Latinos/as was as wide-reaching as it was severe.

In the realm of voting, Latinos/as, like African Americans, were often disenfranchised through unforgiving literacy tests that their white counterparts were rarely expected to take; worse, only some states' election commissions sponsored these tests, so any legal challenge the federal government might have brought against these states would be classified as federal infringement and fall moot due to the precedent of 10<sup>th</sup> Amendment states' rights (Blessett, 2015: pp. 13-15). With such widespread disenfranchisement, Latinos/as were deprived of their basic democratic right to representation and agenda-setting in federal and state legislatures, which was eventually reflected through the wave of anti-Latino/a laws and policies that affected the areas of housing and education until the mid-twentieth century.

In modern America, home ownership is crucial for class mobility, as it is in our homes that we generate most of our wealth. Lawmakers also know this to be true, which is why the policy of racial redlining from the 1930s to the 1960s was so impactful: by denying Latinos/as the right to purchase homes in certain neighborhoods, or even blocking their acquisition of Federal Housing Administration (FHA)-backed mortgages (Rothstein, 2017), the federal government arguably did more damage to Latino/a wealth generation and social mobility here than in any other policy area. What transpired in the housing market is nothing short of blatant segregation. And when one considers that quality of K-12 education is largely based off one's zip code, it becomes clear that segregating housing policy would logically result in segregated schools.

Outside of homeownership and wealth generation, there remains one other supposed “equalizer” in the United States: education. And just as federal and state governments prevented Latinos/as from homeownership, so too did they attempt to segregate Latinos/as into lower quality K-12 educational environments. Until the 1930s, Latinos/as were segregated into their own, separate schools as they were determined, either through their surname, fluency in Spanish, or appearance to be non-white (Haney-López, 1997: p.1148); but once the “Mexican” racial classification emerged in the 1930s, this segregation could then be easily justified pursuant to the Supreme Court’s “separate but equal” ruling in *Plessy v. Ferguson* (1895). Then came the lawsuits, the first of which was *Mendez v. Westminster* (1946); in *Mendez*, the plaintiffs successfully argued that it was discriminatory for the Westminster, California school district to send one Mexican child to the designated Mexican school because her last name did not sound white enough, especially when another Mexican student in the same grade was allowed to attend the white school on account of her light skin and white-sounding surname. Unfortunately, Haney-López notes that *Mendez* did not establish a precedent against segregating Latinos/as on the basis of race in schools, as Latinos/as were legally categorized in the 1940s as being white (1997: p. 1150). For this reason, *Brown v. Board of Education* did not even guarantee Latinos/as protection from race-based segregation in schools. Indeed, it was not until 1954’s *Hernandez v. Texas* that the Supreme Court would finally recognize that segregating Latinos/as does constitute racial segregation and is therefore unconstitutional in all aspects of public life, including K-12 education (Haney-López, 1997: pp. 1146-1147; 1166).

Between these instances of government-sponsored discrimination and the instances where the government permitted discrimination through inaction, the groundwork for deeply rooted,

contemporary systemic racism against Latinos/as was laid by the eve of the Civil Rights Movement.

### ***III. MODERN-DAY CONSEQUENCES***

#### ***A. Housing and Wealth Inequality***

Legal redlining would come to an end with the Fair Housing Act of 1968; but for Latinos/as and other groups who were effectively blocked from homeownership and equity over the prior decades, the damage was already done, as is evidenced by contemporary housing and income statistics. Economists Rothwell and Massey (2010) demonstrate through statistics that Black and Latino/a neighborhoods in major U.S. cities are typically densely packed in urban areas, a factor which they demonstrate correlates with exponentially lower share of the total wealth among Americans (pp. 1125-1127). This being densely packed into urban neighborhoods also has been shown to have an adverse impact on the average health of the Latino/a demographic, as they are more likely to reside in areas zoned for high-pollution and few green spaces (Ramirez et al., 2019). Meanwhile, Darder and Torres note that as of the mid-2010s, one in ten Latinos/as were jobless – 50% more than their white counterparts –, more Latino/a children are living in poverty than children of any other demographic, and that U.S. born Latinos/as accumulate less wealth on average than U.S. born white individuals (2015; pp. 159;161). Clearly, the fifty-year head start Latinos/as lost out on in the housing market is playing out in the form of modern wealth inequality for U.S. born Latinos/as; and for recent Latino/a immigrants, wealth inequality is still an inevitability: Latino/a immigrants generate less wealth on average than their native-born counterparts, as the racialization of their ethnicity works against them (Painter & Qian, 2016: p. 151).

In addition, a modern manifestation of housing discrimination still exists for Latinos/as in the form of predatory lending – Latinos/as faced increased urban segregation and subprime mortgages in the housing market through the 1990s, and phenomenon that ended with the



demographic taking on far more financially damage than white homeowners during the Housing Market Crisis of the late 2000s (Nier & St. Cyr, 2011: pp. 944-949). When considering that Latinos/as are the least likely demographic to own equity outside of a home (Díaz-McConnell, 2015: 254-258), this revelation of how subprime lending financially harms Latinos/as becomes even more poignant.

### *B. Education Inequality*

Though Latinos/as are rapidly becoming the largest demographic in American K-12 public schools (Ross, Rouse, & Bratton, 2010: p.69), they still face significant inequality in education. Seeing as educational opportunity in the U.S. is directly related to where one lives, the prior section on the state of contemporary Latino/a housing inequality proves telling of how Latinos/as are faring in the realm of K-12 education.

From a representative level, Latinos/as are the least likely demographic to hold positions on school boards, even in districts where the overwhelming majority of students are Latino/a themselves (Ibid.: p. 71). Because of this underrepresentation, Latinos/as are deprived of access to agenda setting that would prove beneficial to their educational outcomes: while one study notes that 37% of Latinos/as over age 25 have not even received a high school diploma or equivalent – largely due to the fact that many of these individuals spoke English as a second language and were never properly taught English in school – (Wilson, 2017: pp. 129-130), the predominately white school boards of rural school districts around the country are abolishing Spanish language and ESL education (Delgado, 2009: p. 308). And even if one assumes a positive outcome in K-12 education, educational inequality for Latinos/as is even more severe at the post-secondary level:

one survey of Americans over 25 found that only 14% of Latinos/as in the surveyed age group had attained college degrees, compared to 32% of whites and 19% of Blacks (Wilson, 2017: p. 129).

While school choice has been proposed as a solution to the disparity of funding and attrition between predominately Latino/a and white schools, Simms and Talbert (2019) caution against this idea, and instead argue that the tendency to rely too heavily on this solution has created a “parenting tax” for the parents of these urban Latino/a students, as giving up on local schools requires that the parent dedicate their time and money towards finding a suitable charter school for their child, something that white suburban parents do not have to do; instead, the authors question why policymakers are not asking why the schools are so racially segregated to begin with, and how we can better guarantee equal educational funding and quality across local schools (pp. 35-38). As the matter currently stands, Latino/a students face significant educational inequality at the K-12 and postsecondary levels, and their lack of representation in the agenda-setting areas of educational policy only worsens the problem for future students.

### *C. Criminal Justice Discrimination*

Though it is often overlooked in favor of wealth and educational, the relationship between historic disenfranchisement and contemporary discrimination by the courts is still a significant example of past injustices causing modern systemic racism. Policy setting and judge appointments start with a vote, and while Latinos/as, especially those who only speak Spanish, have seen major improvements in their ability to vote freely and easily, in light of the 1968 Voting Rights Act provision that barred states from only posting voting materials in English if a certain portion of their adult population spoke another language, photo ID laws and limited polling places in largely

Latino/a neighborhoods still create barriers to voting that disproportionately affect potential Latino/a voters (Marschall & Rutherford, 2016: pp. 590-600).

Furthermore, this lack of access to the ballot box means a lack of power in legislation; the end result of which is the persistence of racializing and discriminating against Latinos/as in the criminal justice system. Just as Haney-López (1997) notes that there is a long (and still ongoing) history of discrimination against Latinos/as in court over matters of Constitutional rights, so too is there still discrimination in modern-day criminal courts – in one study of 8,000 misdemeanor cases in Nebraska over a one-year period, the team of Munoz, McMorris, and DeLisi find that Latino men, particularly those who are immigrants, faced the harshest sentences of any demographic for drug and alcohol-related misdemeanors, and the second harshest sentences for other misdemeanors (2004: pp. 115-118). The authors also propose that the depiction among the general population of the Latino man being a natural assailant – a racist sentiment that dates back to the nineteenth century – is still prevalent, and therefore is negatively impacting the outcomes of Latino men who have interactions with the criminal justice system (Ibid.: 114-116).

#### ***IV. POTENTIAL REMEDIES***

Because the issue of discrimination against Latino/a Americans in most aspects of public life is deeply ingrained and systemic, it is fair to assume that there is no one silver bullet solution that will remedy a long history of institutional wrongdoing. That being the case, this section includes two potential remedies that illustrate some of the methods through which we can begin to dismantle the discriminatory policies and practices of our current system.

##### ***A. Promoting Positive Narratives and HSIs***

As education is commonly hailed as the “great equalizer,” it is not unreasonable to ask how we can alter our K-12 and postsecondary educational systems to better serve Latino/a students. To that end, one possible proposal involves challenging the current narrative that Latino/a students are told in K-12 institutions regarding their likely educational outcome. While it is important to highlight past policies and how they affect the present day, it is also important to not communicate to Latino/a students that their demographic is the most likely to struggle with language integration and drop out before the end of high school.

One potential solution for this inequality is to promote more Latino/a parents to run for their child’s school board, thus allowing the Latino/a demographic more of an opportunity to set the agenda for K-12 education (Ross, Rouse, & Bratton, 2010: pp. 70-72). Stemming from this push for better parent representation on school boards could be changing the standard K-12 narrative for Latino/a students from “you are the most likely to drop out, so you are not disappointing anybody if you give up now,” to “if you get more involved in the school community and ask that the school be more involved in your success in return, then you can defy statistics and

be the start of a high-achievement trend for Latino/a K-12 students,” a strategy which has already proven to work in select New York City public high schools (Gandara, 2015: pp. 455-457).

This accommodation and changing of the narrative for Latino/a students does not need to be limited to K-12 education, either; rather, it can be extended to apply to colleges and universities in the form of Hispanic-Serving Institutions (HSIs). Since 1995, colleges and universities with at least 25% Latino/a enrollments qualify for federal funding under Title III of the Higher Education Act of 1965. As of today, 400 colleges and universities receive HSI funding that allows them to better serve the educational needs of their Latino/a students; the advent of HSI and federal aid for these schools has created a more inclusive higher education environment for Latino/a students, as is indicated by their enrollment; Wilson (2017) notes that by the 2009-2010 school year, half of all Latino/a college students in the United States were attending an institution that was receiving HSI funding (pp. 131-132). Considering the correlation between attaining a bachelor’s or master’s degree and having an exponentially higher earning potential than if one were to drop out of high school or just attain a GED, HSIs and curriculum accommodations for Latino/a students could be a positive step toward a higher educated Latino/a population that is able to better represent themselves and their policy preferences in both private and public sectors.

Seeing as how Wilson (2017) recognizes that the triumph of HSIs would not be possible without new Latino/a representation in Congress putting emphasis on the issue of Latino/a educational outcomes, this first proposal actually somewhat relates to the next proposal.

*B. Promoting Better Representation in Government*

The closest we can possibly come to having one single policy solution for correcting the systemic discrimination Latinos/as still face today is by not only including Latinos/as in policy and legislative circles, but also ensuring that Latinos/as are able to have the political influence that is proportional to the significant share of the total population they will have in the coming years.

Similar to K-12 schools, Latino/a engagement with politics is directly reflective of how much they feel that they are welcome and heard in political circles. Indeed, Schildkraut writes that self-perceptions of discrimination are paramount in determining political engagement among Latinos/as: if Latinos/as feel either directly attacked or genuinely heard as a group, their political engagement surges; likewise, if Latinos/as feel that they are not being listened to – or worse – are being pandered towards in a disingenuous manner, then their political engagement sharply declines (2005: pp. 295-296). After the most recent election cycle, it would appear that this logic holds: record levels of engagement and campaigning around Cuban Americans in Florida resulted in a record turnout of Latino/a votes during the 2020 presidential election (Noe-Bustamante, 2020).

Thus, if current politicians make an honest inquiry into the policy preferences of Latino/a Americans instead of treating the voting bloc as a monolith, there is potential for a pathway to true substantive participation and representation of Latino/a citizens in local, state, and federal governments. Though it can not be done by just one person or group, a fundamental change in attitude towards Latinos/as in government could prove to be the best possible way to solve for systemic discrimination from a legislative standpoint; after all, an already massive Latino/a population suggests that political power proportional to population share would be a significant development in the path to ending systemic racism against Latinos/as.

## ***V. CONCLUSION***

The issue of systemic and institutional racism against Latinos/as in the United States does not have one singular cause; likewise, there is not one singular solution to the problem. Therefore, this paper was written in order to shed light on just how complex the current problem really is. With a long-standing history of both government-permitted and government-sponsored discrimination leading to a slew of contemporary consequences that cannot be solved with just one silver bullet policy fix, our nation's present reality is clear: just as there is a new Jim Crow for Black Americans, there is also a new "Juan Crow" for Latino/a Americans. However, just because the problem exists does not mean that it cannot be fixed over time; by acknowledging the myriad ways historic discrimination has grown into modern-day, institutional barriers to equality for Latinos/as, the first step towards significant positive change is taken. Though the history of America's past is a history of racial discrimination, if we take active steps to recognize our faults and change for the better now, then perhaps our future history will be a better one.

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